

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

SECOND REGULAR SESSION
FIFTY-EIGHTH LEGISLATURE

SIXTY- EIGHTH LEGISLATIVE DAY
FRIDAY, MARCH 17, 2006

Senate Chamber

President Pro Tempore Geddes called the Senate to order at 9 a.m.

Roll call showed all members present except Senators Andreason, Brandt, Burkett, Gannon, Pearce, and Stennett, absent and excused.

Prayer was offered by Chaplain Don Hardenbrook.

The Pledge of Allegiance was led by Ashley Burke, Page.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senator Stennett was recorded present at this order of business.

March 17, 2006

The JUDICIARY AND RULES Committee reports that **S 1453, S 1454, S 1455**, and **SP 101** have been correctly printed.

DARRINGTON, Chairman

S 1453 was referred to the State Affairs Committee.

S 1454 and **S 1455** were referred to the Finance Committee.

SP 101 was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

March 16, 2006

The JUDICIARY AND RULES Committee reports that **S 1418**, as amended, has been correctly engrossed.

DARRINGTON, Chairman

S 1418, as amended, was filed for first reading.

March 16, 2006

The JUDICIARY AND RULES Committee reports that Senate amendments to **H 695, H 717**, as amended in the Senate, **S 1418**, and **H 676** have been correctly printed.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

Senators Brandt and Burkett were recorded present at this order of business.

March 16, 2006

The JUDICIARY AND RULES Committee reports that Enrolled **S 1268, S 1269, S 1270, S 1271, S 1272**, and **S 1301** were delivered to the Office of the Governor at 1:45 p.m., March 16, 2006.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

March 16, 2006

The JUDICIARY AND RULES Committee reports that **S 1259, S 1260, S 1316, S 1317, S 1348, S 1360**, and **S 1383** have been correctly enrolled.

DARRINGTON, Chairman

The President Pro Tempore signed Enrolled **S 1259, S 1260, S 1316, S 1317, S 1348, S 1360**, and **S 1383**, and ordered them transmitted to the House for the signature of the Speaker.

March 17, 2006

The FINANCE Committee reports out **S 1454** and **S 1455** with the recommendation that they do pass.

CAMERON, Chairman

S 1454 and **S 1455** were filed for second reading.

March 16, 2006

The FINANCE Committee reports out **H 793, H 794, H 797, H 798**, and **H 799** with the recommendation that they do pass.

CAMERON, Chairman

H 793, H 794, H 797, H 798, and **H 799** were filed for second reading.

March 16, 2006

The AGRICULTURAL AFFAIRS Committee reports out **H 596, H 492, and H 466** with the recommendation that they do pass and with the recommendation that they be placed on the Consent Calendar.

WILLIAMS, Chairman

H 596, H 492, and H 466 were filed for second reading.

March 16, 2006

The AGRICULTURAL AFFAIRS Committee reports out **H 594** with the recommendation that it do pass.

WILLIAMS, Chairman

H 594 was filed for second reading.

March 16, 2006

The COMMERCE AND HUMAN RESOURCES Committee reports out **H 723** and **HCR 55** with the recommendation that they do pass.

ANDREASON, Chairman

H 723 was filed for second reading.

HCR 55 was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

Messages from the House

March 16, 2006

Mr. President:

I transmit herewith **H 801, H 802, H 803, H 804, H 805, H 784, HJM 21, HJM 22, H 760**, as amended, and **H 663**, as amended, which have passed the House.

JUKER, Chief Clerk

H 801, H 802, H 803, H 804, H 805, H 784, HJM 21, HJM 22, H 760, as amended, and **H 663**, as amended, were filed for first reading.

March 16, 2006

Mr. President:

I return herewith **S 1299, S 1345, S 1371, S 1311, S 1312, S 1336, SJR 107, S 1416, S 1318, S 1319, S 1320, S 1322, S 1323, S 1324, S 1326, S 1328, S 1362, S 1375, S 1347, SJM 118, S 1396, S 1422, S 1335, S 1250, S 1251, S 1252, S 1385, and S 1391** which have passed the House.

JUKER, Chief Clerk

S 1299, S 1345, S 1371, S 1311, S 1312, S 1336, SJR 107, S 1416, S 1318, S 1319, S 1320, S 1322, S 1323, S 1324, S 1326, S 1328, S 1362, S 1375, S 1347, SJM 118, S 1396, S 1422, S 1335, S 1250, S 1251, S 1252, S 1385, and S 1391 were referred to the Judiciary and Rules Committee for enrolling.

March 16, 2006

Mr. President:

I transmit herewith Enrolled **H 593, H 614, H 584, H 587, H 711, H 718, H 565**, as amended, **H 611**, as amended, **H 664, H 632, H 633, H 631, H 432, H 619, H 491, H 538, H 539, H 645, H 605, H 606**, and **H 607** for the signature of the President.

JUKER, Chief Clerk

The President Pro Tempore signed Enrolled **H 593, H 614, H 584, H 587, H 711, H 718, H 565**, as amended, **H 611**, as amended, **H 664, H 632, H 633, H 631, H 432, H 619, H 491, H 538, H 539, H 645, H 605, H 606**, and **H 607** and ordered them returned to the House.

March 16, 2006

Mr. President:

I return herewith Enrolled **S 1256, S 1258, S 1302, S 1303**, and **S 1304** which have been signed by the Speaker.

JUKER, Chief Clerk

Enrolled **S 1256, S 1258, S 1302, S 1303**, and **S 1304** were referred to the Judiciary and Rules Committee for transmittal to the Office of the Governor.

Senators Andreason and Gannon were recorded present at this order of business.

The Senate advanced to the Tenth Order of Business.

Motions and Resolutions

The President Pro Tempore announced that **SCR 132**, having been held, was before the Senate for final consideration.

Moved by Senator Lodge, seconded by Senator Stennett, that **SCR 132** be adopted. The question being, "Shall the resolution be adopted?"

Roll call resulted as follows:

AYES--Andreason, Brandt, Broadsword, Bunderson, Burkett, Burtenshaw, Cameron, Coiner, Compton, Corder, Darrington, Davis, Fulcher, Gannon, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge, Malepeai, Marley, McGee, McKenzie, Richardson, Schroeder, Stegner, Stennett, Sweet, Werk, Williams. Total - 34.

NAYS--None.

Absent and excused--Pearce. Total - 1.

Total - 35.

Whereupon the President Pro Tempore declared **SCR 132** adopted, title was approved, and the resolution ordered transmitted to the House.

The President Pro Tempore announced that **HCR 38** was before the Senate for final consideration, the question being, "Shall the resolution be adopted?"

On motion by Senator Langhorst, seconded by Senator Little, **HCR 38** was adopted by voice vote, title was approved, and the resolution ordered returned to the House.

Senator Pearce was recorded present at this order of business.

The President Pro Tempore announced that **HCR 58** was before the Senate for final consideration.

Moved by Senator Andreason, seconded by Senator Burkett, that **HCR 58** be adopted. The question being, "Shall the resolution be adopted?"

Roll call resulted as follows:

AYES--Andreason, Brandt, Broadsword, Bunderson, Burkett, Burtenshaw, Cameron, Coiner, Compton, Corder, Darrington, Davis, Fulcher, Gannon, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough, Langhorst, Little, Lodge, Malepeai, Marley, McGee, McKenzie, Pearce, Richardson, Schroeder, Stegner, Stennett, Sweet, Williams. Total - 34.

NAYS--None.

Absent and excused--Werk. Total - 1.

Total - 35.

Whereupon the President Pro Tempore declared **HCR 58** adopted, title was approved, and the resolution ordered returned to the House.

The President Pro Tempore announced that **HCR 54** was before the Senate for final consideration, the question being, "Shall the resolution be adopted?"

On motion by Senator Williams, seconded by Senator Stennett, **HCR 54** was adopted by voice vote, title was approved, and the resolution ordered returned to the House.

The Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions, and Memorials

H 695, as amended in the Senate, and **H 717**, as amended in the Senate, as amended in the Senate, by State Affairs Committee, were read the first time at length and filed for second reading.

H 676, as amended in the Senate, by Revenue and Taxation Committee, was read the first time at length and filed for second reading.

S 1418, as amended, by Finance Committee, was read the first time at length and filed for second reading.

H 801, H 802, H 803, H 804, and H 805, by Appropriations Committee, were introduced, read the first time at length, and referred to the Finance Committee.

H 784, by State Affairs Committee, was introduced, read the first time at length, and referred to the Commerce and Human Resources Committee.

HJM 21, by Ways and Means Committee, was introduced, read at length, and referred to the Resources and Environment Committee.

HJM 22, by Ways and Means Committee, was introduced, read at length, and referred to the State Affairs Committee.

H 760, as amended, by Revenue and Taxation Committee, was introduced, read the first time at length, and referred to the Transportation Committee.

H 633, as amended, by Health and Welfare Committee, was introduced, read the first time at length, and referred to the Health and Welfare Committee.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

H 696 and H 724, by State Affairs Committee, were read the second time at length and filed for third reading.

H 688 and H 706, by Revenue and Taxation Committee, were read the second time at length and filed for third reading.

S 1449, S 1450, S 1451, and S 1452, by Finance Committee, were read the second time at length and filed for third reading.

H 545 and H 640, by Resources and Conservation Committee, were read the second time at length and filed for third reading.

H 541 and H 638, by Resources and Conservation Committee, were read the second time at length and filed for third reading, Consent Calendar.

H 602, as amended, by Transportation and Defense Committee, was read the second time at length and filed for third reading.

H 762, H 709, as amended, **H 719**, as amended, and **H 738**, as amended, by State Affairs Committee, were read the second time at length and filed for third reading.

H 684, by Education Committee, was read the second time at length and filed for third reading, Consent Calendar.

H 752, by Education Committee, was read the second time at length and filed for third reading.

H 686, H 687, and H 729, by Revenue and Taxation Committee, were read the second time at length and filed for third reading.

S 1393, by Resources and Environment Committee, was read the second time at length and filed for third reading.

H 582, by Judiciary, Rules, and Administration Committee, was read the second time at length and filed for third reading.

H 680, by Revenue and Taxation Committee, was read the second time at length and filed for third reading.

The Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

On request by Senator Davis, granted by unanimous consent, all Senate bills were placed at the head of the Third Reading Calendar, followed by House bills amended in the Senate, followed by House bills.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

The President Pro Tempore declared the Senate resolved into the Committee of the Whole and called Senator Stegner to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, the President Pro Tempore called the Senate to order.

Report of the Committee of the Whole

Senator Stegner, Chairman of the Committee of the Whole, reported out **H 678** and **H 679**, without recommendation and without amendment; and **H 421** and **H 422**, without recommendation, amended as follows:

SENATE AMENDMENT TO H 421 AMENDMENT TO SECTION 1

On page 1 of the printed bill, delete lines 28 through 32 and insert: "cable to the annual increase in the Idaho housing price index as determined by the United States office of federal housing enterprise oversight. The state tax commission shall publish the adjustments required by this subsection each and every year the office of federal housing enterprise oversight announces a change in the Idaho housing price index. The adjustments".

SENATE AMENDMENT TO H 422 AMENDMENT TO THE BILL

On page 1 of the printed bill, following line 34, insert:

"SECTION 2. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year in which the claimant first filed a claim on the homestead in question, a claimant must be an owner of the homestead and on January 1 of said year a claimant must be:

(a) Not less than sixty-five (65) years old; or

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or

© A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States department of veterans affairs; or

(f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and the claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) "Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.

(5) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income:

(a) Alimony;

(b) Support money;

(c) Nontaxable strike benefits;

(d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding any return of principal paid by the recipient of an annuity and excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);

(e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;

(f) Worker's compensation; and

(g) The gross amount of loss of earnings insurance.

It does not include capital gains, gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and, if married, the claimant's spouse, may be deducted from income. To the extent not

reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars (\$5,000) per claim. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include dependency and indemnity compensation or death benefits paid to a person described in subsection (1) of this section by the United States department of veterans affairs and arising from a service-connected death or disability. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(I). Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission in such form as the county assessor, board of equalization or state tax commission shall determine. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

(6) "Occupied" means actual use and possession.

(7) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who:

(a) Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(b) Is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or

© Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered as ownership for determining initial qualification for property tax reduction benefits; however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of

this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property was held by a person who has died without timely filing a claim for property tax reduction, the estate of the deceased person shall be the "owner," provided that the time periods during which the deceased person held such title shall be attributed to the estate for the computation of any time periods under subsection (8)(a) or (8)(b) of this section.

(8) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:

(i) At least six (6) months during the prior year; or

(ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or

(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. Payment of utilities shall not be payment of a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, nursing facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(14), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.";

and in line 35, delete "SECTION 2" and insert: "SECTION 3".

CORRECTION TO TITLE

On page 1, in line 6, following "CORRECTIONS;" insert: "AMENDING SECTION 63-701, IDAHO CODE, TO REVISE THE DEFINITION OF 'INCOME';".

AMENDMENT TO THE BILL

On page 1 of the printed bill, following line 34, insert: "SECTION 2. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed an application under section 63-602G, Idaho Code, and has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code.

Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year in which the claimant first filed a claim on the homestead in question, a claimant must be an owner of the homestead and on January 1 of said year a claimant must be:

(a) Not less than sixty-five (65) years old; or

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or

© A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States department of veterans affairs; or

(f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and the claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) "Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.

(5) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income:

(a) Alimony;

(b) Support money;

© Nontaxable strike benefits;

(d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);

(e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;

(f) Worker's compensation; and

(g) The gross amount of loss of earnings insurance.

It does not include ~~capital gains~~, gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and, if married, the claimant's spouse, may be deducted from income. To the extent not reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars (\$5,000) per claim.

"Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include dependency and indemnity compensation or death benefits paid to a person described in subsection (1) of this section by the United States department of veterans affairs and arising from a service-connected death or disability. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(l). Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission in such form as the county assessor, board of equalization or state tax commission shall determine. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

(6) "Occupied" means actual use and possession.

(7) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who:

(a) Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(b) Is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or

© Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered as ownership for determining initial qualification for property tax reduction benefits; however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property was

held by a person who has died without timely filing a claim for property tax reduction, the estate of the deceased person shall be the "owner," provided that the time periods during which the deceased person held such title shall be attributed to the estate for the computation of any time periods under subsection (8)(a) or (8)(b) of this section.

(8) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:

- (i) At least six (6) months during the prior year; or
- (ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or
- (iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. Payment of utilities shall not be payment of a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, nursing facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(14), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.";

and in line 35, delete "SECTION 2" and insert: "SECTION 3".

CORRECTION TO TITLE

On page 1, in line 6, following "CORRECTIONS;" insert: "AMENDING SECTION 63-701, IDAHO CODE, TO REVISE THE DEFINITIONS OF "CLAIMANT" AND "INCOME";".

AMENDMENT TO SECTION 1

On page 1 of the printed bill, delete lines 13 through 19 and insert: "the income limitations, ~~and property tax reduction amounts to reflect cost-of-living fluctuations. The adjustments shall effect changes in each income limitation by a percentage equal as near as practicable to the annual cost-of-living percentage modification as determined by the secretary of health and human services pursuant to 42 USC 415(f)~~ which shall be the greater of: (a) an individual's income as defined in section 63-701, Idaho Code, of not more than twenty-eight thousand dollars (\$28,000) per household for tax year 2006, and each tax year thereafter; or (b) one hundred eighty-five percent (185%) of the federal poverty guidelines for a household of two (2) for tax year 2006, and each tax year thereafter. The lowest".

CORRECTION TO TITLE

On page 1, delete lines 3 and 4 and insert: "63-705, IDAHO CODE, TO DELETE ADJUSTMENTS TO INCOME LIMITATIONS, TO PROVIDE FOR A MAXIMUM INCOME LIMITATION OF THE GREATER OF TWENTY-EIGHT

THOUSAND DOLLARS FOR TAX YEAR 2006, AND EACH TAX YEAR THEREAFTER OR ONE HUNDRED EIGHTY-FIVE PERCENT OF THE FEDERAL POVERTY GUIDELINES FOR A HOUSEHOLD OF TWO FOR TAX YEAR 2006, AND EACH TAX YEAR THEREAFTER, AND TO PROVIDE FOR A MAXIMUM TAX".

The Committee also has **S 1387, S 1241, S 1441, and H 713**, as amended, under consideration, reports progress, and begs leave to sit again.

STEGNER, Chairman

On motion by Senator Stegner, seconded by Senator Malepeai, the report was adopted by voice vote.

H 421, as amended in the Senate, and **H 422**, as amended in the Senate, were filed for first reading as amended, and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

H 678 and H 679 were filed for second reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 1:45 p.m. until the hour of 9:30 a.m., Monday, March 20, 2006.

ROBERT L. GEDDES, President Pro Tempore

Attest: JEANNINE WOOD, Secretary